

IN THE  
SUPREME COURT OF MISSOURI

CIRCUIT COURT OF THE 18TH  
JUDICIAL CIRCUIT OF MISSOURI,  
DONALD BARNES, PRESIDING CIRCUIT JUDGE,

APPELLANT

VERSUS

SC 85312

COOPER COUNTY, MISSOURI,  
A BODY POLITIC AND CORPORATE,  
BY AND THROUGH ITS GOVERNING BODY,  
THE COUNTY COMMISSION OF  
COOPER COUNTY, MISSOURI,

RESPONDENT

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CONCERNING PETITION FOR REVIEW OF DECISION OF THE  
JUDICIAL FINANCE COMMISSION OF MISSOURI

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RESPONDENT'S BRIEF

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## **JURISDICTIONAL STATEMENT**

Respondent adopts Appellant's jurisdictional statement.

## **STATEMENT OF FACTS**

In 2002 the parties litigated an issue before the Judicial Finance Commission, *to-wit*, whether Respondent was required to fund the salary of a particular deputy juvenile officer. The Commission ruled in Respondent's favor. (Appellant's Brief, A-2-4).

This cause comes before this Court following a 2003 decision by the Judicial Finance Commission, again determining that Respondent is not required to fund the salary of the same deputy juvenile officer. The Commission also found that Appellant's request for attorney's fees is unreasonable in the circumstances.

Before the effective date of Section 211.292 RSMo 1998, a circuit court determined the number of deputy juvenile officers necessary for the juvenile court's essential functions and determined their salaries, subject to the review procedure set out in Section 50.640 RSMo. The counties paid the balance of the compensation not paid by the state. Section 476.270 RSMo 1978; Section 211.394 RSMo 1988.

With the amendment of Section 211.393 RSMo in 1998, the State assumed employment of deputy juvenile officers and became responsible for their salaries and fringe benefits.

Before 2003, the salary of this particular deputy juvenile officer was paid by successive grants from the State of Missouri's Division of Youth Services. The most recent grant funded the position for the first half of the calendar year 2003. Since the grant expired on June 30 2003, anticipating loss of funding, Appellant added the deputy juvenile officer's salary to the 2003 budget estimate submitted to Respondent, and budgeted \$5,000 for attorney's fees to relitigate the issue of reasonableness before the Judicial Finance Commission and to have any unfavorable decision reviewed by this Court. (L.F. 8, Appellant's Brief 6).

Respondent filed its *Petition for Review* with the Judicial Finance Commission pursuant to Section 50.640 RSMo, contesting the reasonableness of the budgeted salary and attorney's fees. (L.F. 3-6). The Judicial Finance Commission did not conduct an evidentiary hearing; rather, it concluded that there were no controverted material facts and the issues before the Commission were questions of law.

The Judicial Finance Commission ruled (1) that to require a county to pay 'personal services related expenditures' would frustrate the intention of 1998 H.B. 971, which was to relieve the counties of the growth in the personal services portion of the counties' juvenile court budgets while requiring counties to continue to provide the same amount of funding for juvenile court operations [the '*Stone County* rule']; and (2) that the funding request to pay the deputy juvenile officer was unreasonable because a grant position does not create an applicable exception to the '*Stone County* rule'. The Judicial Finance Commission also found the request for attorney fees to be unreasonable. (L.F. 181-184).

It is from these findings and decisions by the Judicial Finance Commission that Appellant seeks review.

Appellant's *Statement of Facts* mentions that

In 1997, the Cooper County Commission addressed the issue of funding the deputy juvenile officer position in the event grant funding was discontinued. In the Budget Message, the County stated "looking further ahead to 1998 and 1999, if grant funding is discontinued, appropriations from General Revenue will be increased by . . . \$33,315.87 for the Juvenile Office. This increased funding will be necessary in order to keep the current personnel who are now paid entirely or partially through grant funding in the . . . Juvenile Office." (L.F. 145).

However, The 'Budget Message' cited by Appellant in its Statement of Facts (Appellant's Brief 18; L.F. 145) was in fact the message of the Cooper County Clerk, the County's budget officer. There is nothing in the record to indicate that the budget message was prepared by, adopted by, or approved by Respondent.

Appellant's *Statement of Facts* mentions that

The County Commission has as its presiding officer the same Presiding Commissioner who entered into the original grant contract with all of the future obligations arising therefrom, including the possibility that the County would eventually be responsible for meeting the salary requirements of the grant staff position.

However, nothing in the record supports that assertion. The only evidence in the record pertaining to any grant is Appellant's 2003 grant application, signed by Appellant's presiding circuit judge (L.F. 148), which lists the Cooper County Clerk as the applicant's fiscal officer (L.F. 148). The 2003 grant application in the Legal File is not signed or approved by Respondent, nor does it contain any statement or assurance that Respondent will continue funding or assume responsibility for funding if the grant is disapproved or discontinued.



## POINTS RELIED ON

### I.

THE JUDICIAL FINANCE COMMISSION WAS CORRECT IN DECIDING THAT, AS A MATTER OF LAW, APPELLANT MAY NOT REQUIRE RESPONDENT TO PAY A DEPUTY JUVENILE OFFICER'S SALARY. ALTHOUGH SECTION 50.640 RSMO REQUIRES A COUNTY TO PAY EXPENSES NECESSARY TO CARRY OUT A CIRCUIT COURT'S ESSENTIAL FUNCTIONS, SECTION 211.393 RSMO 1998 CREATES AN EXCEPTION TO THAT RULE, AND RELIEVES COUNTIES IN MULTI-COUNTY CIRCUITS OF THE OBLIGATION TO PAY SALARIES OF DEPUTY JUVENILE OFFICERS.

*Bosley v. Berra*, 688 S.W.2d 353 (Mo. banc 1985)

*Stone County Commission v. Thirty-Ninth Judicial Circuit*, 99-0054 (Mo. Jud. Fin. Comm. 1999)

*Cooper County Commission v. Eighteenth Judicial Circuit*, 01-0059 (Mo. Jud. Fin. Comm. 2002)

*Cape Girardeau County, et al. v. Thirty-Second Judicial Circuit*, 01-0061 (Mo. Jud. Fin. Comm. 2002).

## II.

THE JUDICIAL FINANCE COMMISSION WAS CORRECT IN FINDING THAT, AS A MATTER OF LAW, SECTION 211.393 RSMO 1998 PROHIBITS RESPONDENT FROM BEING REQUIRED TO PAY A DEPUTY JUVENILE OFFICER'S SALARY. SECTION 211.393 RSMO 1998 PREEMPTS A CIRCUIT COURT'S AUTHORITY TO REQUIRE THAT A DEPUTY JUVENILE OFFICER'S SALARY BE PAID BY A COUNTY IN A MULTI-COUNTY CIRCUIT, EVEN IF THE DEPUTY JUVENILE OFFICER MIGHT BE REASONABLY NECESSARY FOR THE JUVENILE COURT TO CARRY OUT ITS ESSENTIAL FUNCTIONS.

*Stone County Commission v. Thirty-Ninth Judicial Circuit*, 99-0054 (Mo. Jud. Fin. Comm. 1999)

*Cooper County v. Eighteenth Judicial Circuit*, 01-0059 (Mo. Jud. Fin. Comm. 2002)

### **III.**

**THE JUDICIAL FINANCE COMMISSION WAS CORRECT IN DECLINING TO AWARD ATTORNEY'S FEES TO APPELLANT BECAUSE, IN THIS LIMITED CIRCUMSTANCE WHERE APPELLANT PROSPECTIVELY REQUESTED ATTORNEY'S FEES IN A CASE THAT APPELLANT ANTICIPATED WOULD BE BROUGHT, AND WHERE THE JUDICIAL FINANCE COMMISSION PREVIOUSLY RENDERED A DECISION ON AN IDENTICAL MATTER IN FAVOR OF RESPONDENT, APPELLANT'S REQUEST FOR ATTORNEY'S FEES IS NOT REASONABLE.**

- A) THE JUDICIAL FINANCE COMMISSION HAS AUTHORITY AND DISCRETION TO DETERMINE WHETHER AN AWARD OF ATTORNEY'S FEES IS WARRANTED UNDER SECTION 476.270 RSMO;**
- B) THE JUDICIAL FINANCE COMMISSION HAS AUTHORITY AND DISCRETION TO DETERMINE WHETHER APPELLANT ACTED REASONABLY IN BRINGING ISSUES BEFORE THE JUDICIAL FINANCE COMMISSION;**
- C) THE JUDICIAL FINANCE COMMISSION HAS DISCRETION AND AUTHORITY TO DETERMINE WHETHER, PURSUANT TO SECTION 476.270 RSMO, A BUDGET ITEM FOR ATTORNEY'S FEES MUST BE PAID OUT OF THE TREASURY OF THE COUNTY IN WHICH A CIRCUIT COURT IS HELD.**

*Bosley v. Berra*, 688 S.W.2d 353 (Mo. banc 1985)

**IV.**

**THE DECISION OF THE JUDICIAL FINANCE COMMISSION IN A PRIOR YEAR, COOPER COUNTY COMMISSION V. EIGHTEENTH JUDICIAL CIRCUIT, 01-0059 (MO. JUD. FIN. COMM. 2002), FOUND AGAINST APPELLANT ON THE IDENTICAL ISSUE, TO-WIT, APPELLANT'S REQUEST FOR FUNDING THE PARTICULAR DEPUTY JUVENILE OFFICER'S POSITION. THAT DECISION BECAME FINAL AND WAS NOT APPEALED BY EITHER PARTY. THEREFORE, THIS YEAR'S PROCEEDING IS BARRED BY THE PRINCIPLES OF *RES JUDICATA* OR ESTOPPEL BY JUDGMENT, AND COLLATERAL ESTOPPEL.**

*Deatherage v. Cleghorn*, 2003 WL 22239188 (Mo. App. S.D. 2003)

*Harmon v. Headley*, 95 S.W.3d 154 (Mo. App. W.D. 2003)

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## ARGUMENT

### I.

THE JUDICIAL FINANCE COMMISSION WAS CORRECT IN DECIDING THAT, AS A MATTER OF LAW, APPELLANT MAY NOT REQUIRE RESPONDENT TO PAY A DEPUTY JUVENILE OFFICER'S SALARY. ALTHOUGH SECTION 50.640 RSMO REQUIRES A COUNTY TO PAY EXPENSES NECESSARY TO CARRY OUT A CIRCUIT COURT'S ESSENTIAL FUNCTIONS, SECTION 211.393 RSMO 1998 CREATES AN EXCEPTION TO THAT RULE, AND RELIEVES COUNTIES IN MULTI-COUNTY CIRCUITS OF THE OBLIGATION TO PAY SALARIES OF DEPUTY JUVENILE OFFICERS.

*Bosley v. Berra*, 688 S.W.2d 353 (Mo. banc 1985)

*Stone County Commission v. Thirty-Ninth Judicial Circuit*, 99-0054 (Mo. Jud. Fin. Comm. 1999)

*Cooper County Commission v. Eighteenth Judicial Circuit*, 01-0059 (Mo. Jud. Fin. Comm. 2002)

*Cape Girardeau County, et al. v. Thirty-Second Judicial Circuit*, 01-0061 (Mo. Jud. Fin. Comm. 2002).

Pursuant to Section 477.600.7 RSMo, this Court reviews the decision of the Judicial Finance Commission *de novo*, but accords its conclusions regarding reasonableness of

circuit court expenditures that degree of deference due in view of its legislative genesis and statutory functions. *Bosley v. Berra*, 688 S.W.2d 353 (Mo. *banc* 1985).

Because the Judicial Finance Commission had already rendered a decision on issues of fact and law in its 2002 decision between Appellant and Respondent, concerning the identical principal issue, the Judicial Finance Commission correctly determined that there was no need to hold an evidentiary hearing; that there were no controverted areas of material fact and that the only issues before it were questions of law. The Judicial Finance Commission correctly determined that as a matter of law, Respondent could not be required to pay the salary of the deputy juvenile officer because upon passage of 1998 House Bill 971 (codified at Section 211.393 RSMo 1998), juvenile officers had become State employees and the State assumed responsibility for their salaries.

The Judicial Finance Commission determined that the amended statute does not require a county in a multi-county circuit to pay for 'personal services' of the type rendered by a deputy juvenile officer.

Respondent admits that the appellate precedents and statutes cited by Appellant in Point I of its brief are correct statements of the law for juvenile court budgets prior to the enactment of Section 211.393 RSMo 1998, and are still correct statements of circuit court budget law for matters other than juvenile court personnel salaries.

However, the enactment of Section 211.393 RSMo 1998 changed the budget concept and procedure for juvenile court personnel salaries.

Since the 1998 amendment of Section 211.393 RSMo, it is now within the State's purview to decide whether an additional deputy juvenile officer is necessary in Cooper County and, if so, to fund the position.

There is no evidence in the record to support Appellant's contention that "the factual circumstances of this controversy are unique to Cooper County and potentially would not be applicable to any other Missouri county." (Appellant's Brief 19).

It is now irrelevant whether Respondent previously cooperated in submitting DYS grant applications with the intention of discharging future obligations after the grants expired, because funding issues concerning deputy juvenile officers in multi-county circuits have been preempted by the State.

The issue here is not precisely as Appellant has phrased it, *to-wit*, whether Section 211.393 RSMo 1998 prohibits a county from paying the salary of juvenile court personnel as a matter of law. Rather, the issue is whether, after the 1998 amendment of Section 211.393 RSMo, a circuit court can require a county in a multi-county circuit to pay the salary of a deputy juvenile officer.

The Judicial Finance Commission said in *Cooper County Commission v. Eighteenth Judicial Circuit*, 01-0059 (Mo. Jud. Fin. Comm. 2002):

The Commission concludes that the 'maintenance of effort funding' required by Section 211.393.6 RSMo 2000 is a minimum level of funding required of each affected county. The Commission concludes in the present action and consistent with our decision in *Stone County Commission v. Thirty-Ninth Judicial*

*Circuit*, Case No. 99-0054, that a grant position does not create an applicable exception and is not ‘outside’ the scope of this decision.

Nor, Respondent believes, is it relevant whether the salary budgeted by the Circuit Court for the salary of the deputy juvenile officer meets the ‘reasonably necessary’ test explained in *State ex rel. Judges for the Twenty-Second Judicial Circuit*, 494 S.W.2d 39 (Mo. banc 1973); *In re: 1979 Budget of the Juvenile Court of St. Louis County*, 590 S.W.2d 900 (Mo. banc 1980); and *State ex rel. Twenty-Second Judicial Circuit v. Jones, et al.*, 823 S.W.2d 471 (Mo. banc 1992).

Respondent contends that the deputy juvenile officer salary issue is exempted from the general ‘reasonable expenditures’ concept of Section 50.640 RSMo and the ‘maintenance of effort funding’ contemplated by Section 211.393.1(6) RSMo 1998.

The Judicial Finance Commission said in *Stone County Commission v. Thirty-Ninth Judicial Circuit*, 99-0054 (Mo. Jud. Fin. Comm. 1999):

To require a county to pay “personal services” related expenditures would frustrate the intention of 1998 H.B. 971, which was to relieve the counties of the growth in the personal services portion of the counties’ juvenile court budgets while requiring counties to continue to provide the same amount of funding for juvenile court operations.

Respondent believes this principle holds true even if a circuit court cloaks a salary request for a deputy juvenile officer by terming it a ‘maintenance of effort funding’ request.

That is, ‘maintenance of effort funding’ is not a wild card that a circuit court can use to avoid



the effect of Section 211.292 RSMo 1998.

The Judicial Finance Commission has said that even ‘maintenance of effort funding’ requests must still meet the ‘reasonably necessary’ test, in *Cape Girardeau County, et al. v. Thirty-Second Judicial Circuit*, 01-0061 (Mo. Jud. Fin. Comm. 2002).

Contrary to Appellant’s argument, Respondent believes Section 211.393 RSMo 1998 must be interpreted to obviate a county’s obligation to pay a deputy juvenile officer’s salary, even though under the ordinary analysis of Section 50.640 RSMo, such an expense might be deemed reasonably necessary.

It is true, as Appellant contends, that Section 211.382 RSMo 1998 provides that the Juvenile Court may recruit and hire “qualified professionals” to provide vital services to children under the “enhanced partnership” between the state and the counties. However, nothing in the statute indicates that the ‘qualified professionals’ may be additional deputy juvenile officers. If the legislature had intended that Section 211.382 RSMo 1998 authorized a juvenile court to employ additional deputy juvenile officers under that statute, it could have said so.

Respondent believes that, absent a statutory definition in Section 211.382 RSMo 1998 of ‘qualified professionals’ that includes deputy juvenile officers, and especially considering the State’s employment of deputy juvenile officers under the provisions of Section 211.393 RSMo 1998, the ‘qualified professionals’ that can be employed by a circuit court under the authority of Section 211.382 RSMo 1998 may not be deputy juvenile officers.

Respondent believes it unnecessary to harmonize Section 211.393 RSMo 1998 and Section 50.640 RSMo, because the statutes are not in conflict.

## II.

**THE JUDICIAL FINANCE COMMISSION WAS CORRECT IN FINDING THAT, AS A MATTER OF LAW, SECTION 211.393 RSMO 1998 PROHIBITS RESPONDENT FROM BEING REQUIRED TO PAY A DEPUTY JUVENILE OFFICER'S SALARY. SECTION 211.393 RSMO 1998 PREEMPTS A CIRCUIT COURT'S AUTHORITY TO REQUIRE THAT A DEPUTY JUVENILE OFFICER'S SALARY BE PAID BY A COUNTY IN A MULTI-COUNTY CIRCUIT, EVEN IF THE DEPUTY JUVENILE OFFICER MIGHT BE REASONABLY NECESSARY FOR THE JUVENILE COURT TO CARRY OUT ITS ESSENTIAL FUNCTIONS.**

*Stone County Commission v. Thirty-Ninth Judicial Circuit*, 99-0054 (Mo. Jud. Fin. Comm. 1999)

*Cooper County v. Eighteenth Judicial Circuit*, 01-0059 (Mo. Jud. Fin. Comm. 2002)

Respondent concedes certain authority cited in Appellant's brief: Article II, Section 1 of the Missouri Constitution of 1945, establishing separation of powers of the three branches of government, the source of the judiciary's inherent powers; *State ex rel. Weinstein v. St. Louis County*, 451 S.W.2d 99 (Mo. banc 1970), generally expressing a circuit court's inherent authority to select and appoint employees reasonably necessary to carry out its functions of care, discipline, detention and protection of children who come within

its jurisdiction and to fix the compensation of such employees; and *State ex rel. St. Louis County v. Edwards*, 589 S.W.2d 283, 288-9 (Mo. banc 1979), generally expressing a circuit court's inherent powers to control its juvenile court employees.

Another precedent cited by Appellant, *Smith v. Thirty-Seventh Judicial Circuit of Missouri*, 847 S.W.2d 755, 760 (Mo. banc 1993), determines who employs a chief deputy juvenile officer for worker's compensation purposes, and seems to have no particular application to our set of facts.

Before the amendment of Section 211.393 RSMo in 1998, a circuit court determined the number of deputy juvenile officers necessary for the juvenile court's essential functions and determined their salaries, subject to the review procedure set out in Section 50.640 RSMo. The counties paid the balance of the compensation not paid by the state. Section 476.270 RSMo 1978; Section 211.394 RSMo 1988.

With the amendment of Section 211.393 RSMo in 1998, the State assumed employment of deputy juvenile officers and became responsible for their salaries and fringe benefits. It logically follows that the State now has the inherent power to determine when and where additional juvenile officers are needed, and to provide funds to pay their salaries and fringe benefits.

The State did not assume the particular deputy juvenile officer's position due to an exception contained in Section 211.393.1(2) RSMo 1998 omitting positions funded by public or private grant.

Respondent believes it is not incumbent upon this Court to decide the necessity of the

deputy juvenile officer's position to the essential functions of Appellant's juvenile court. After the effective date of Section 211.393 RSMo 1998, the decision whether to assume, add, or fund a deputy juvenile officer's position is now within the exclusive purview of the State.

After the amendment of Section 211.393 RSMo in 1998, the Judicial Finance Commission said in *Stone County Commission v. Thirty-Ninth Judicial Circuit*, 99-0054 (Mo. Jud. Fin. Comm. 1999):

To require a county to pay "personal services" related expenditures would frustrate the intention of 1998 H.B. 971, which was to relieve the counties of the growth in the personal services portion of the counties' juvenile court budgets while requiring counties to continue to provide the same amount of funding for juvenile court operations.

In *Cooper County v. Eighteenth Judicial Circuit*, 01-0059 (Mo. Jud. Fin. Comm. 2002), the Judicial Finance Commission determined that a grant position does not create an applicable exception and is not 'outside the scope' of its *Stone County* decision.

### **III.**

**THE JUDICIAL FINANCE COMMISSION WAS CORRECT IN DECLINING TO AWARD ATTORNEY'S FEES TO APPELLANT BECAUSE, IN THIS LIMITED CIRCUMSTANCE WHERE APPELLANT PROSPECTIVELY REQUESTED ATTORNEY'S FEES IN A CASE THAT APPELLANT ANTICIPATED WOULD BE BROUGHT, AND WHERE THE JUDICIAL FINANCE COMMISSION PREVIOUSLY RENDERED A DECISION ON AN IDENTICAL MATTER IN FAVOR OF RESPONDENT, APPELLANT'S REQUEST FOR ATTORNEY'S FEES IS NOT REASONABLE.**

- A) THE JUDICIAL FINANCE COMMISSION HAS AUTHORITY AND DISCRETION TO DETERMINE WHETHER AN AWARD OF ATTORNEY'S FEES IS WARRANTED UNDER SECTION 476.270 RSMO;**
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- C) THE JUDICIAL FINANCE COMMISSION HAS DISCRETION AND AUTHORITY TO DETERMINE WHETHER, PURSUANT TO SECTION 476.270 RSMO, A BUDGET ITEM FOR ATTORNEY'S FEES MUST BE PAID OUT OF THE TREASURY OF THE COUNTY IN WHICH A CIRCUIT COURT IS HELD.**

*Bosley v. Berra*, 688 S.W.2d 353 (Mo. banc 1985)

Appellant budgeted \$5,000.00 for anticipated attorney fees, believing that litigation of these issues would follow in the Judicial Finance Commission, and perhaps in this Court. The Judicial Finance Commission declined to award Appellant the attorney fees submitted in its budget request.

In its decision, the Commission pointed out that it had ruled on an identical question between the parties in 2001, and that Appellant should have known the outcome of the instant case when the current *Petition for Review* came before the Commission. The Commission also reasoned that to award attorney's fees would promote "perennial litigation of this identical issue *ad infinitum*." (Append. A4, L.F. 183).

In its brief, Appellant acknowledged that it in fact did believe the outcome of the instant case before the Commission would quite possibly be as the Commission decided. (Appellant's Brief 28).

Appellant is correct in that Section 476.270 RSMo provides that expenditures accruing in a circuit court shall be paid out of the county treasury in which the court is held, and that the language of the statute is mandatory. However, that mandate is subject to review by the Judicial Finance Commission. *Bosley v. Berra*, 688 S.W.2d 353 (Mo. banc 1985).



#### IV.

THE DECISION OF THE JUDICIAL FINANCE COMMISSION IN A PRIOR YEAR, COOPER COUNTY *COMMISSION V. EIGHTEENTH JUDICIAL CIRCUIT*, 01-0059 (MO. JUD. FIN. COMM. 2002), FOUND AGAINST APPELLANT ON THE IDENTICAL ISSUE, *TO-WIT*, APPELLANT'S REQUEST FOR FUNDING THE PARTICULAR DEPUTY JUVENILE OFFICER'S POSITION. THAT DECISION BECAME FINAL AND WAS NOT APPEALED BY EITHER PARTY. THEREFORE, THIS YEAR'S PROCEEDING IS BARRED BY THE PRINCIPLES OF *RES JUDICATA* OR ESTOPPEL BY JUDGMENT, AND COLLATERAL ESTOPPEL.

*Deatherage v. Cleghorn*, 2003 WL 22239188 (Mo. App. S.D. 2003)

*Harmon v. Headley*, 95 S.W.3d 154 (Mo. App. W.D. 2003)

*Robin Farms, Inc. v. Beeler*, 991 S.W.2d 182 (Mo. App. W.D. 1999)

*WEA Crestwood Plaza v. Flamers Charburgers*, 24 S.W.3d 1 (Mo. App. E.D. 2000)

The doctrine of *res judicata*, commonly referred to as claim preclusion, operates as a bar to the reassertion of a cause of action that has been previously adjudicated in a proceeding between the same parties or those in privity with them. The doctrine of collateral estoppel, commonly known as issue preclusion, precludes the same parties from relitigating issues previously adjudicated between the same parties or those in privity with them. For either doctrine to apply, a final judgment on the merits must have been rendered involving the

same claim or issue sought to be precluded in the cause in question. *Robin Farms, Inc. v. Beeler*, 991 S.W.2d 182, 187 (Mo. App. W.D. 1999).

In order for estoppel by a former judgment (*res judicata*) to apply, there must be four identities: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of the persons and parties to the action; and (4) identity of the quality of the person for or against whom the claim is made. A former adjudication on the same cause of action between the same parties is conclusive in subsequent proceedings as to every issue of fact that was or might have been litigated in the first proceeding under what is called estoppel by judgment. But where a second action is upon a claim, demand or cause of action different from a prior action, the judgment in the first action does not operate as an estoppel as to matters not litigated in the former action. *WEA Crestwood Plaza, LLC v. Flamers Charburgers, Inc.*, 24 S.W.3d 1, 9 (Mo. App. E.D. 2000).

The Southern District, in *Deatherage v. Cleghorn*, 2003 WL 22239188 (Mo. App. S.D. 2003), said

The doctrine of collateral estoppel, or issue preclusion, precludes the same parties or those in privity from relitigating issues that were necessarily and unambiguously decided in a previous judgment.

The elements of collateral estoppel are: (1) the issue decided in the prior adjudication mirrors that in the present action; (2) the prior adjudication resulted in a final decision on the merits; (3) the party against whom collateral estoppel may apply participated as a party or in privity with a

party to the prior adjudication; and (4) the party against whom the doctrine may apply has had a full and fair opportunity to litigate the issue. "For either doctrine to apply, a final judgment on the merits must have been rendered involving the same claim or issue sought to be precluded in the cause in question."

"The doctrine of *res judicata* takes on the character of the rule against splitting a cause of action." Both doctrines " 'are closely related because both are designed to prevent a multiplicity of lawsuits.' " [Citations omitted]

Even issues that were not raised in the first proceeding, but issues that might have been raised, are precluded. "A party may not litigate a claim and then, upon an adverse judgment, revive the claim on cumulative grounds that could have been brought before the court in the first proceeding." *Deatherage* at 642.

"Claims and issues which could have been litigated in a prior adjudicated action are precluded in a later action between the same parties or those in privity with them." *Harmon v. Headley*, 95 S.W.3d 154 (Mo. App. W.D. 2003) citing *Beasley v. Mironuck*, 877 S.W.2d 653, 656 (Mo. App. E.D. 1994) citing 20 AmJur2d, *Counterclaim, Recoupment, and Setoff* § 13.

Respondent believes the facts in the cause before this Court support all of the elements necessary to apply the doctrines of *res judicata* or estoppel by judgment, and collateral estoppel.

## CONCLUSION

Respondent prays that this Court accord the Judicial Finance Commission's conclusions regarding reasonableness of circuit court expenditures that degree of deference due in view of its legislative genesis and statutory functions, and reach the same decision, in all respects, as the Judicial Finance Commission.

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## CERTIFICATE OF COMPLIANCE AND SERVICE

Comes now William McCullah and certifies as follows:

1. This brief complies with the requirements of Rule 55.03 and the limitations contained in Rules 84.06(c) and 84.06(g), Missouri Rules of Civil Procedure.
2. The number of words contained in this brief is 4,656.
3. This brief was prepared with and formatted in Microsoft Word 2000, Version 7.
4. A floppy disk containing this brief is filed contemporaneously herewith, and an identical disk has been provided to counsel for Appellant.
5. Said disks are double-sided, high-density, IBM-PC compatible, and have been scanned for viruses using Norton AntiVirus version 9.05.15 with virus definitions released on October \_\_\_\_\_ 2003.
6. Two true and complete copies of *Respondent's Brief*, together with a floppy disk containing said brief, were deposited on October \_\_\_\_\_ 2003 with the United States Postal Service, postage prepaid, properly addressed to Steven Fritz, Esquire, 202 West Fourth Street, Sedalia, Missouri 65201.

BY \_\_\_\_\_  
WILLIAM McCULLAH 26293

# APPENDIX

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